**SUNDRA RAJOO NADARAJAH**
**v. THIRILOGACHANDRAN SHANMUGASUNDARAM**

HIGH COURT MALAYA, KUALA LUMPUR
SU TIANG JOO J
[CASE NO: WA-23CY-61-10-2021]
27 MARCH 2025

**Abstract** – *Although published under the umbrella of a society of professionals, an article can be defamatory if the words used are carefully chosen to cut, humiliate, ridicule and hurt the targeted party. That the cut comes from a society of professionals, of which the target is a member, aggravates the sting inflicted.*

***TORT:*** *Defamation – Claim – Words found in article – Article also posted on WhatsApp chat group – Tortfeasor wrote article in response to claimant's article – Allegation by claimant that tortfeasor's article contained defamatory words – Whether words complained of defamatory – Whether referred to claimant – Whether published – Whether defences of justification and/or fair comment available to tortfeasor – Where fair comment is applicable, whether it was negated by evidence of malice*

The plaintiff, former Director of the Asian International Arbitration Centre, was a prominent figure in the domain of alternative dispute resolution, both nationally and internationally. He was also, *inter alia*, a registered architect and town planner. Pertubuhan Arkitek Malaysia ('PAM') was a society registered with the Registrar of Societies under the Societies Act 1966, comprising members who, in the main, have an architectural qualification. The plaintiff had written an article entitled 'Consequences and Flaws to the Certificate of Completion and Compliance: Comparative Analysis with Proposed Solutions', which was published on his website and republished by the Malayan Law Journal. The first impugned publication, entitled 'Refuting Unsubstantiated and Misleading Claims on Flaws of Certificate of Completion and Compliance' was jointly presented by Lembaga Arkitek Malaysia ('LAM') and PAM and carried the byline '… in response to the article by Datuk Sundra Rajoo'. The first impugned article was published on LAM's website. According to the plaintiff, the first impugned article contained words which were defamatory of him (the words complained of and alleged to be defamatory are set out in para. [33] of this judgment). The offending article was also posted on a WhatsApp chat group, 'Feedback for PAM', which the plaintiff alleged was also defamatory of him ('second impugned publication'). Hence, the present claim by the plaintiff against the defendant. The issues that arose were: (i) whether the words complained of were defamatory; (ii) whether they referred to the plaintiff; (iii) whether they

were published; (iv) if found to be defamatory, whether PAM was entitled to rely on the defences of justification; and/or fair comment on a matter of public interest; and (v) where fair comment was applicable, whether it was negated by evidence of malice.

**Held (allowing claim):**

**(1)** The offending article carried defamatory imputations which had the tendency to lower the plaintiff in the estimation of right-thinking members of society. The defamatory imputations from the words complained of were that the plaintiff was dishonest, untrustworthy, immoral, an unethical person and had no sense of professionalism despite him being a registered architect a town planner, a chartered arbitrator and an advocate and solicitor of the High Court in Malaya. (paras 34 & 35)

**(2)** That the defamatory statements referred to the plaintiff could be clearly seen in the sub-heading of the offending article itself which said that it was a joint paper or article targeted at the plaintiff. In fact, in the offending article, the plaintiff's name was liberally mentioned and, in the words complained of, the plaintiff's name was mentioned 12 times and, in the entire offending article, the plaintiff's name was mentioned 46 times. There could be no doubt that the second element for defamation, *ie*, that the words complained of referred to the plaintiff, had been proved against PAM. (paras 37-39)

**(3)** The plaintiff had proven, on a balance of probabilities, that besides it having admitted to the joint publication, PAM had supplied information intending or knowing that it was published, had knowingly allowed itself to be held out at a joint publisher of the offending article with it not taking any steps to dissociate itself from the offending article which was and continued to be published to the world at large until the date of the handing down of the decision, when it could have done so. The defendant could be found to be jointly and severally liable. That LAM was not sued was irrelevant because, in a tort committed by more than one joint tortfeasor, it was open to the plaintiff to sue any or all of them. (paras 50 & 51)

**(4)** PAM admitted that the offending article was shared *via* it being posted on a WhatsApp chat group 'Feedback for PAM'. Besides the said admission, the following pieces of compelling evidence led to the finding that it was proved on a balance of probabilities that it was PAM who had published it on the said WhatsApp group: (i) the offending article was found on a mobile telephone number which belonged to the President of PAM ('DW1'); (ii) the offending article was posted, at a time when DW1 was the President of PAM and he was also the administrator of the WhatsApp chat group 'Feedback for PAM';

(iii) DW1's excuse that his wife and daughter assisted him in managing the WhatsApp chat group served to lay legal responsibility on him as the administrator who had authorised them to publish the offending article; (iv) the offending article on the WhatsApp chat group 'Feedback for PAM' was the same as that on LAM's website by reason of them having the same checksum hash value or digital thumbprint at a time when DW1 was the President of PAM, the administrator of the WhatsApp chat group and the owner of the mobile phone number xxx xxx xxxx led to the inference that it was more probable than not that it was done by DW1 for and behalf of PAM; and (v) the WhatsApp chat group 'Feedback for PAM' had numerous chat participants. (paras 57 & 58)

**(5)** When the 14 alleged facts and nine particulars particularised and pleaded in the defendant's defence of justification were perused, PAM had pleaded sufficient particulars stating which of the words complained of it were alleged statements of facts and of the facts and matters it relied on in support of the allegation that the words were true and that they were fair comments on a matter of public interest. However, when each of the 14 alleged facts was referred to, they did not justify PAM to use words which were egregious and vitriolic against the plaintiff personally instead of the views that the plaintiff was conveying. PAM failed to prove, on a balance of probabilities, how these 14 avowed facts made out its defence of justification when it employed the words complained of. (paras 73, 87 & 89)

**(6)** When the words complained of, read together with the offending article as a whole, it came across clearly that the offending article was designed to attack the plaintiff personally. Instead of expressing its disagreement with the views expressed by the plaintiff and then going on to articulate the reasons for its disagreement, the words complained of were structured in a manner which appeared on almost every page of the offending article, with the plaintiff's name liberally sprinkled 46 times all over the offending article, including the sub-heading. The choice of words complained of was extreme and far exceeded the bounds of fair comment on a matter of public interest. Even if the comments could be found to be fair on a matter of public interest, the plaintiff had proved on a balance of probabilities that the comments were actuated by malice. (paras 93-95 & 98)

**(7)** Given the professional standing of the plaintiff, both nationally and internationally, the defamatory comments and imputation did touch on his integrity, credibility, personal and professional reputation and thus, were serious. The publication was on LAM's website which, thus, was worldwide. The publication on the defendant's WhatsApp chat group 'Feedback for PAM' had 215 participants. As these would be, in the main, his peers, the feeling of being brought into hatred, ridicule and

being humiliated would be acute and distressing. The plaintiff was awarded a rolled-up award of both general and aggravated damages of RM400,000 together with interest and costs. (paras 108, 109 & 117)

**(8)** The defendant was ordered to publish a notice of disassociation from the offending article on LAM's website and to remove the same from its WhatsApp chat group and be restrained from publishing the offending article containing the words complained of. (para 119)

**Case(s) referred to:**

*Abdul Rahman Talib v. Seenivasagam & Anor [1966] CLJU 5; [1966] 1 LNS 5 FC* ***(refd)***
*Abu Hassan Hasbullah v. Zukeri Ibrahim [2018] 3 CLJ 726 CA* ***(refd)***
*Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC* ***(refd)***
*Bataille v. Newland & Ors [2002] EWHC 1692* ***(refd)***
*Chew Hock Jin v. Lim Jenn Shiah [2021] CLJU 114; [2021] 1 LNS 114 CA* ***(refd)***
*Chin Choon v. Chua Jui Meng [2005] 2 CLJ 569 CA* ***(refd)***
*Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA* ***(refd)***
*Chong Chieng Jen v. Government Of State Of Sarawak & Anor [2019] 1 CLJ 329 FC* ***(refd)***
*Dato' Sri Mohd Najib Tun Hj Abdul Razak & Anor v. Mohd Rafizi Ramli & Another Appeal [2018] 4 CLJ 41 CA* ***(refd)***
*Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals [2023] 5 CLJ 167 FC* ***(refd)***
*Doree Industries (M) Sdn Bhd & Ors v. Sri Ram & Co & Ors [2001] 4 CLJ 446 HC* ***(refd)***
*Felcra Bhd v. Adli Sharidan Sahar & Ors [2024] CLJU 1663 HC* ***(refd)***
*Gee Eng Wah v. Teoh Eng Keong & Anor [2019] CLJU 783; [2019] 1 LNS 783 CA* ***(refd)***
*Government Of Malaysia v. Lim Kit Siang & Another Case [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 SC* ***(refd)***
*Indrani Ramasamy v. Kesavan Subramaniam [2024] 2 CLJ 411 CA* ***(refd)***
*John v. MGN Ltd [1997] QB 586* ***(refd)***
*Khairy Jamaluddin v. Dato' Seri Anwar Ibrahim [2015] 3 CLJ 1062 CA* ***(refd)***
*Lee Tak Suan & Anor v. Tunku Dato Seri Shahabudin & Ors [2009] 4 CLJ 365 FC* ***(foll)***
*Lee Hsien Loong v. Singapore Democratic Party [2007] 1 SLR 675* ***(refd)***
*Lim Guan Eng v. Mahiaddin Md Yassin [2025] 3 CLJ 231 HC* ***(refd)***
*Lim Lip Eng v. Ong Ka Chuan [2022] 5 CLJ 847 FC* ***(refd)***
*Ling Wah Press (M) Sdn Bhd & Ors v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals [2000] 3 CLJ 728 FC* ***(refd)***
*M.G.G. Pillai v. Tan Sri Dato Vincent Tan Chee Yioun & 2 Other Appeals [1995] 2 CLJ 912 CA* ***(refd)***
*Mahdzir Md Isa v. Mohd Ridhuan Tee Abdullah [2022] CLJU 482; [2022] 1 LNS 482 HC* ***(refd)***
*Majlis Perbandaran Ampang Jaya v. Steven Phoa Cheng Loon & Ors [2006] 2 CLJ 1 FC* ***(refd)***
*Microsoft Corp v. SM Summit Holdings Ltd [1999] 3 SLR (R) 465* ***(refd)***
*Mirzan Mahathir v. Star Papyrus Sdn Bhd [2000] 5 CLJ 507 HC* ***(refd)***
*Nik Elin Zurina Nik Abdul Rashid & Anor v. Kerajaan Negeri Kelantan [2024] 3 CLJ 323 FC* ***(refd)***
*PP v. Chew Weng Leong [2015] CLJU 1117; [2015] 1 LNS 1117 HC* ***(refd)***
*Ragavan Rajoo v. Ignatian Benedict Duraisingham [2025] CLJU 107 HC* ***(refd)***
*Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee [2019] 3 CLJ 729 FC* ***(refd)***
*Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong [2024] 6 CLJ 635 FC* ***(refd)***

*Sundra Rajoo Nadarajah v. Leaderonomics Sdn Bhd & Anor [2023] 7 CLJ 485 HC* ***(refd)***
*Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors [2021] 6 CLJ 199 FC* ***(refd)***
*Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] CLJU 304; [1995] 1 LNS 304 HC* ***(refd)***
*Utusan Melayu (Malaysia) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor [2005] 1 CLJ 71 CA* ***(refd)***
*Village Grove Condominium Management Corporation v. Yunco Enterprise Sdn Bhd [2021] CLJU 48; [2021 1 LNS 48 HC* ***(refd)***

**Legislation referred to:**
Civil Law Act 1956, s. 10(1)(a)
Defamation Act 1957, ss. 8, 9
Evidence Act 1950, ss. 43, 114A
Rules of Court 2012, O. 78 r. 3(2)
Rules of the High Court 1980, O. 78 r. 3(2)
Societies Act 1966, s. 9(c)
Street, Drainage and Building Act 1974, ss. 70(27), (20), 95(2)

**Other source(s) referred to:**
*Consequences And Flaws To The Certificate Of Completion And Compliance: Comparative Analysis With Proposed Solutions* [2018] 2 MLJ xxiv

*For the plaintiff - Rueben Mathiavaranam & Sumita Balasubramaniam; M/s Zaid Ibrahim Suflan T H Liew & Partners*
*For the defendant - David Lingam, Deepinder Kaur Tara Singh & Kamaldip Kaur Santokh Singh; M/s David Lingam & Co*

*Reported by Lina E*

## JUDGMENT

**Su Tiang Joo J:**

### Introduction

**[1]** The plaintiff sued the society, Persatuan Arkitek Malaysia ('PAM') of which he is a member through its Honorary Secretary grounded on defamation premised upon two publications of an article, one on the website of Lembaga Arkitek Malaysia ('LAM') and another on the WhatsApp chat group entitled "Feedback for PAM".

**[2]** The article carries the title "Refuting Unsubstantiated and Misleading Claims on Flaws of Certificate of Completion and Compliance." Immediately under this title in smaller font is the sub-heading "A joint paper by Lembaga Arkitek Malaysia (LAM) and Pertubuhan Arkitek Malaysia (PAM) in response to the article by Datuk Sundra Rajoo."

**[3]** After a full trial with five witnesses produced and conducted over seven days ending on 25 October 2024, written submissions were presented, the last of which was on 8 January 2025. With parties content to rely upon

their written submissions, I had handed down judgment on the appointed date of 10 January 2025 in favour of the plaintiff and awarded him a rolled-up award of both general and aggravated damages totalling RM400,000 together with interest thereon as prayed at 5% pa from the date of judgment (10 January 2025) until full settlement and costs of RM100,000.

**[4]** I had also in my judgment allowed the further prayers sought by the plaintiff that:

(i) PAM issues a notice of disassociation from the first impugned article published on LAM's website on terms which are to be approved by both the plaintiff and PAM within two weeks from the date of the judgment and to be published in the English and Malay languages respectively in The Star and Berita Harian online editions only, with liberty to apply;

(ii) that PAM remove or cause to be removed the second impugned article which was uploaded and published in the WhatsApp chat group known as "feedback for PAM" within seven days from the date of the judgment; and

(iii) an injunction is granted to restrain PAM whether by itself, its associates, its agents and or its representatives from publishing the impugned articles containing the words complained of or similar words defamatory of and concerning the plaintiff.

**[5]** Broad grounds for my judgment were handed down on 10 January 2025 with the rider that these will be augmented in the event of any appeal. The defendant, which shall be referred to as PAM interchangeably, has since filed a notice of appeal on 23 January 2025 and these are the full grounds of judgment for the decision made.

**Parties**

**[6]** *Lim Guan Eng v. Mahiaddin Md Yassin* [2025] 3 CLJ 231 at para. 5, a case on defamation, Her Ladyship Roz Mawar Rozain JC (now J) succinctly said in words which bear repetition that:

> The respective positions and offices held by both parties are crucial to understand the gravity and context of this defamation ... This context is essential for assessing both the defamatory nature of the statements and the quantum of damages that may be appropriate.

**[7]** The plaintiff is a prominent figure in the domain of alternative dispute resolution, both nationally and internationally. He is the former Director of the Asian International Arbitration Centre ("AIAC"). He has authored and co-authored many textbooks and articles on the law, practice and procedure on arbitration, statutory adjudication, and construction law. Although a Malaysian, he has even authored and produced the book, "*Law, Practice And Procedure of Arbitration In India*", published by Thomson Reuters.

**[8]** From his profile annexed to his statement of claim (A pp. 64 to 68) and supported by the evidence given by him (PWS1 encl. 84, Q&As 5 to 13) which were undisputed by the defendant, save to say that he is not a practising architect, I set out below a summary of his *curriculum vitae*:

(i) An architect registered with LAM since 1987;

(ii) A Graduate Member of PAM from 1984 to 1986, admitted as a Corporate Member in 1986 and inducted in the first batch of Fellows in 2010;

(iii) A town planner registered with the Board of Town Planners since 2000;

(iv) An advocate and solicitor since 2 September 2004 and practising under the name and style of "Sundra Rajoo";

(v) Involved in the practice of alternative dispute resolution locally and abroad mainly in arbitration as a sole arbitrator or as part of a tribunal;

( vi) Director of AIAC from 2010 to 2018;

(vii) Founding President of the Asian Institute of Alternative Dispute Resolution and was the president from 2018 to 2022;

viii) Chairman of the Asian Domain Name Dispute Resolution Centre for 2018;

(ix) Appointed as the Deputy Chairman of the Federal International de Football Association ("FIFA") Adjudicatory Chamber of the Ethics Committee in 2017;

(x) Advisory Board Member of the Jamaican International Arbitration Centre;

(xi) Member of the Advisory Committee of the International Commercial Dispute Prevention and Settlement Organisation;

(xii) Director of IWHAAM, a start-up Alternative Dispute Resolution Centre in the Bahamas;

(xiii) Advisory Board Member of the Council for National and International Commercial Arbitration in India;

(xiv) A visiting and adjunct professor of the:

(a) Faculty of Law of the University Kebangsaan Malaysia in 2013;

(b) Faculty of Law of the Universiti Malaya;

(c) Built Environment Faculty of Universiti Teknologi Malaysia in 2012; and

(d) School of Housing, Building and Planning of Universiti Sains Malaysia;

A (xv) Conferred the Honorary Degree of Doctor of Laws by Leeds Beckett University in July 2015;

(xvi) Authored the following textbooks on construction law and arbitration:

(a) Standard Form of Building Contract Compared Volumes 1 & 2;

B (b) Law, Practice and Procedure of Arbitration in India (English version);

(c) Law, Practice and Procedure of Arbitration in India (Mandarin version);

C (d) A Practical Guide to Statutory Adjudication in Malaysia;

(e) *A Practical Guide to Statutory Adjudication in Malaysia*, 2nd edn;

(f) *A Practical Guide to Statutory Adjudication in Malaysia*, 3rd edn; and

(g) *Law, Practice and Procedure of Arbitration,* 2nd edn.

D (xvii) Participated in editing the *International Arbitration Discourse and Practices in Asia* edited by Vinayak K Bhatia, Maurizio Gotti, Azirah Hashim, Philip Koh and Sundra Rajoo

**[9]** PAM is a society registered with the Registrar of Societies on E 20 January 1967 under the Societies Act 1966 comprising of members who in the main have an architectural qualification. Amongst its aims and objectives prescribed by its constitution (CBD5) are:

(i) To promote and enlarge knowledge, study and practice of architecture and the various arts and sciences connected therewith;

F (ii) To provide a central organisation for architecture;

(iii) To assist and advise Governments, local authorities, private or public bodies, and the general public, on questions relating to the art and science of architecture, architectural education, on the development of G property, town and country planning, the built environment and the design and construction of buildings generally;

(iv) To promote friendly interaction and discourse amongst architects, and to hold meetings for readings and discussions of matters relating to the art and science of architecture;

H (v) To originate and promote improvement in the law and regulations affecting architects, architecture and other matters connected with them; and

(vi) To promote the appreciation, confidence and understanding of the I public in the profession and architecture.

**[10]** As a society of professionals, statements made by it will, needless to say, be accepted as credible not only to its members but to the public in general.

**Nomenclature**

**[11]** To facilitate comprehension, the article alleged to have been published by PAM and which carries words complained of by the plaintiff to be defamatory shall be referred to as "the offending article".

**[12]** The alleged publication of the offending article on LAM's website is referred to as the first impugned publication.

**[13]** The alleged publication on the WhatsApp chat group entitled "Feedback for PAM" is referred to as the second impugned publication.

**[14]** The plaintiff is referred to at times as Sundra Rajoo, Sundra or Rajoo.

**Issues To Be Tried**

**[15]** The following are the agreed issues to be tried (C/encl. 86).

(i) Whether PAM:

(a) on or around 7 November 2018 jointly uploaded and/or published or caused to be uploaded and/or published or participated in the uploading and/or the publishing of the offending article on the website of LAM ('first impugned publication');

(b) subsequently on 14 November 2018 through its then President, Ezumi Harzani bin Ismail, uploaded and republished the offending article in a WhatsApp chat group known as feedback for PAM ('second impugned publication').

(ii) Whether the offending article referred to the plaintiff or was published of and concerning the plaintiff.

(iii) Whether the words complained of are set out in para. 25 of the statement of claim are defamatory of the plaintiff carrying the meanings pleaded and set out under para. 30 of the statement of claim.

(iv) If the offending article is found to be defamatory of the plaintiff, whether PAM is entitled to rely on the defences of: (a) justification, and/or (b) fair comment on a matter of public interest, and (c) where fair comment is applicable whether it was negated by evidence of malice.

**[16]** Guided by the settled law, I will deal with the issues in the following manner:

(i) whether the words complained of are defamatory;

(ii) whether they refer to the plaintiff;

A (iii) whether they were published; and

(iv) if found to be defamatory whether PAM is entitled to rely on the defences of: (a) justification, and/or (b) fair comment on a matter of public interest, and (c) where fair comment is applicable whether it was negated by evidence of malice.

B

**Agreed Facts**

**[17]** The following are found in the statement of agreed facts (D/encl. 63).

**[18]** The plaintiff had written an article entitled "*Consequences And Flaws To The Certificate Of Completion And Compliance: Comparative Analysis With Proposed Solutions*" which was uploaded and published on his website at the universal resource locatur ("url") https://home.sundrarajoo.com/2017/12/12consequences-and-flaws-to-the-certificate-of-completion-and-compliance-comparative-analysis-with proposed-solutions ("the plaintiff's 2017 article").

C

D **[19]** The Malayan Law Journal ("MLJ") subsequently in 2018 republished the plaintiff's 2017 article as "*Consequences and Flaws to the Certificate of Completion and Compliance: Comparative Analysis with Proposed Solutions* [2018] 2 MLJ xxiv with minor edits by its editorial team ("plaintiff's 2018 MLJ article").

E Both the plaintiff's 2017 article and the plaintiff's 2018 MLJ article will be collectively referred to as the "plaintiff's articles".

**[20]** The plaintiff had earlier written an article entitled "*The Certificate of Completion and Compliance (CCC) in the Building Industry – Bugbear or Bunkum?"* [2008] 1 MLJ cix ("plaintiff's 2008 MLJ article"), which the

F plaintiff had co-written with Ir Harbans Singh.

**[21]** The first impugned publication entitled "*Refuting Unsubstantiated and Misleading Claims on Flaws of Certificate of Completion and Compliance*" was jointly presented by LAM and PAM.

G **[22]** The first impugned publication carries the byline "A joint paper by Lembaga Arkitek Malaysia (LAM) and Pertubuhan Arkitek Malaysia (PAM) in response to the article by Datuk Sundra Rajoo."

**[23]** LAM is the statutory body that regulates the practice of the architectural profession and is responsible for the issuance of guidelines,

H general circulars on information or current position of practice from time to time. The first impugned article (or offending article) is one of the many articles published by LAM and sharing of information and/or current issues amongst architects is a common practice.

I **[24]** Under the previous system, the certificate of fitness for occupation (CFO) was issued by the local authority under the by-laws to the Street, Drainage and Building Act 1974 (SDBA). The system encountered various problems which led to the delays and additional cost to developments. These

problems led to the introduction of the CCC system initially for single-built detached houses in 1999 and it was implemented for all projects in 2007. The CCC system is based on self-regulation with certification by architects, engineers and registered building draught persons known as the principal submitting person (PSP). It aims to facilitate and accelerate the completion of buildings and is a self-certified process with a 21-stage certification by various professionals and contractors.

**[25]** The statements claimed by the plaintiff to be defamatory are described as the words complained of which are pleaded and set out under para. 25 of the statement of claim must be read and understood in the context of the impugned articles as a whole, the facts and events preceding the said articles, and with an appreciation of the subject matter, namely the shift from the CFO to the CCC regime and reasons behind it.

**[26]** PAM received the plaintiff's letter of demand dated 23 August 2021 and responded to the same on 1 September 2021.

**[27]** PAM received the plaintiff's second letter of demand dated 14 October 2021.

## The Law On Defamation

**[28]** In *Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee* [2019] 3 CLJ 729; [2019] 2 MLRA 345; [2019] 3 MLJ 720 at paras. 29 to 33, our Federal Court held that defamation is committed when the defendant publishes to a third person words or matters containing untrue imputation which must have the tendency to affect the reputation of the plaintiff. Such a defamatory imputation is one which may tend to lower the plaintiff in the estimation of right-thinking members of society generally, to cut him off from society or to expose him to hatred, contempt or ridicule. The Federal Court cited with approval the case of *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1988] 1 MLRH 653; [1989] 1 MLJ 315 wherein the High Court held that:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were published.

**[29]** In *Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] CLJU 304; [1995] 1 LNS 304; [1996] 1 MLJ 393; [1995] 4 MLRH 877 Richard Malanjum J (later CJ) held that:

> Words could still be defamatory even if they did not really lower a plaintiff in the estimation of those to whom they were published. **The law looks only to its tendency** (see *JB Jeyaretnam v. Goh Chok Tong; Syed Husin AH v. Sharikat Penchetakan Utusan Melayu Bhd & Anor*).
>
> (emphasis added)

**[30]** It has been held by high authority that in an action for defamation, the first task of the court is to determine whether the words complained of are capable of bearing a defamatory meaning, see *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371; [1998] 2 MLRA 287; [1999] 1 AMR 753 at pp. 374 & 375; and quoted with approval by the Federal Court in *Chong Chieng Jen v. Government Of State Of Sarawak & Anor* [2019] 1 CLJ 329; [2019] 3 MLJ 300; [2019] 1 MLRA 515 at para. 62 and recently in *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 6 CLJ 635; [2024] 4 MLJ 260 at para. 53.

**[31]** In *Chok Foo Choo* (*supra*), Gopal Sri Ram JCA (later FCJ) said the following which has since been often quoted on whether the words complained of are capable of a defamatory meaning:

> And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in *Jones v. Skelton* [1963] 3 All ER 952 at p. 958:
>
> > The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151). *The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader; guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words*. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense. *In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory*. (See *JB Jeyaretnam v. Goh Chok Tong* [1984] CLJU 139; [1985] 1 MLJ 334.) Richard Malanjum J, in an admirable judgment in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] CLJU 304; [1996] 1 MLJ 393, collected and reviewed the relevant authorities upon this branch of the subject and I would, with respect, expressly approve the approach adopted by him.
>
> > The article in the present instance when read as a whole clearly suggests that the appellant is a person who, under the guise of doing service, was in fact making false statements in order to deceive the people of Lukut. The implication is that the appellant is a man given to deception and is untrustworthy. I think that there can be no doubt that to say of a man that he is a cheat and a liar is a serious defamation of him. It has the effect of lowering the appellant in the estimation of right-thinking members of society

generally. It follows that the learned judge in the present case clearly fell into error when he held that the words complained of were not defamatory of the appellant.

Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for a court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the particular case. In England, libel actions are tried by judge and jury, and the question is left for the jury to determine. However, in this country, libel actions are tried by a judge alone, he is the sole arbiter of questions of law as well as questions of fact. He must, therefore, make the determination. In the present instance, it is quite apparent that it is as a matter of pure fact that the article defames the appellant. It literally calls him a cheat and a liar. There can, in my opinion, be no dispute that the appellant was in fact libelled. I am, therefore, unable to agree with the opposite conclusion arrived at by the learned judge who tried the action".

(emphasis added)

**[32]** The plaintiff cited the Singapore Court of Appeal case of *Microsoft Corp v. SM Summit Holdings Ltd* [1999] 3 SLR (R) 465 at 493 which gave the following further helpful guidance:

[53] The principles applicable in determining the natural and ordinary meaning of the words complained of in a defamation action are well established. *The court decides what meaning the words would have conveyed to an ordinary, reasonable person using his general knowledge and common sense*: *Jeyaretnam Joshua Benjamin v. Goh Chok Tong* [1983-1984] SLR(R) 7 45 and *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew* ([50] *supra*). The test is an objective one: it is the natural and ordinary meaning as understood by an ordinary, reasonable person, not unduly suspicious or avid for scandal. *The meaning intended by the maker of the defamatory statement is irrelevant. Similarly, the sense in which the words were actually understood by the party alleged to have been defamed is also irrelevant.* Nor is extrinsic evidence admissible in construing the words! *The meaning must be gathered from the words themselves and in the context of the entire passage in which they are set out. The court is not confined to the literal or strict meaning of the words, but takes into account what the ordinary, reasonable person may reasonably infer from the words.*

(emphasis added)

## Words Complained Of And Alleged To Be Defamatory

**[33]** The offending article carries the following words complained of and alleged to be defamatory. These words complained of are pleaded in para. 25 of the statement of claim and they are set out hereunder with the alleged defamatory statements set out in bold and underlined for emphasis.

(i) "*Refuting Unsubstantiated and Misleading Claims on Flaws of Certificate of Completion and Compliance*" (Heading);

(ii) "Rajoo had also circulated a similar article in October 2017 *via* email. *Both articles are highly misleading and reflect his misinterpretation and misunderstanding of the Certificate of Completion and Compliance (CCC) framework*. Despite the fact that PAM President, Ar Ezumi Harzani had responded *via* his article titled '*Misperceptions in Self-Regulated Certification of Building Completion and Compliance – A Threat Towards Professional Self-Regulation Framework*' (published in Berita Arkitek November 2017 edition), Rajoo continues to allow another similar article to be published in the MLJ in 2018 cited above.";

(iii) "*From his paper. Rajoo demonstrates his ignorance of the fact that CCC was already being implemented for single built detached houses since year 1999*":

(iv) "We totally refute Rajoo's claim that ten years into its implementation, the CCC has proven to be more of a 'bane than boon'. *Rajoo's understanding and grasp of the CCC regime is shallow and misplaced, hence, this paper rebuts his reasoning one by one*";

(v) "He also claimed that the 'supporters of the CCC regime appear to have not scrutinized the liability issue in the haste to implement this method of public delivery system and the liability issue has not been substantially addressed but merely polished. *All these statements reflect his lack of understanding and knowledge of the liabilities of the various parties involved in the certification process under both the CFO and the CCC systems*."

(vi) "As such, there is no basis for Rajoo to declare that the local authority should take on some liabilities from the professionals under the CCC regime to relieve the liabilities vested on the PSP. *The claim that CCC system places additional liability on architects than the CFO system, and that it places more liability than necessary on the PSP is clearly unfounded and mischievous"*.

(vii) *"Rajoo also appears to be confused with the relationships between CCC and Vacant Possession (VP): and with CCC and CPC etc …*":

(viii) *"With reference to the court case between Pendakwa Raya v. Chew Weng Leong [2015] quoted in Rajoo's paper to support his argument against CCC. Rajoo has not explained the full facts of the case for reasons known to himself"*:

(ix) *"Rajoo seems to have little understanding on the concept of professionalism"*:

(x) "Rajoo pushes for the urgent need to revamp. Perhaps this lay bare the purpose of his interest in this matter. As we have shown, his understanding of the CCC and his arguments against CCC are incorrect. *Today, after more than a decade of implementation of CCC framework. Rajoo's call to revert to the old CFO governance based on his argument that his liability is more fairly and clearly spelt out is misplaced and regressive"*:

(xi) *He suggested so either due to his lack of knowledge in CCC frameworks, lack of confidence in professional integrity, or misconception on the allocation of risk and power between PSP, SP and authorities. It may be all of that and it may also indicate another agenda known to himself"*:

and

(xii) *"LAM and PAM also strongly believe that Rajoo should refrain from giving lectures or providing articles on the CCC and CFO with his skewed and limited understanding, as this could affect the understanding in the subject"*:

(emphasis added)

## Analysis And Findings

*Whether The Words Complained Of Are Defamatory*

**[34]** Applying the law to the offending article read as a whole and in particular, the words complained of, and giving them their ordinary and natural meaning I find that they carry defamatory imputations which have the tendency to lower the plaintiff in the estimation of right-thinking members of society for the following reasons.

**[35]** The ordinary and natural meaning of the words complained of do carry the following defamatory imputations, namely:

(i) The plaintiff deliberately published unsubstantiated and highly misleading contents in the plaintiffs articles in relation to the CCC which carry the defamatory imputation that he is an irresponsible and untrustworthy author conveying information about the CCC which are calculated to mislead the public;

(ii) The plaintiff is not fit to publish articles on issues relating to the CCC as he is unfamiliar and inexperienced with the CCC and by him doing so, it carries the defamatory imputation that he is an irresponsible, reckless and negligent person;

(iii) By stating that the plaintiff is making not only unfounded claims but is also mischievous in doing so, this carries the defamatory imputation that his actions are calculated to cause mischief and that the plaintiff intended to confuse members of the public with his limited understanding and knowledge of the CCC and CFO systems through the plaintiff's articles;

(iv) That by withholding the full facts of the case of *PP v. Chew Weng Leong* [2015] CLJU 1117; [2015] 1 LNS 1117; [2015] MLJU 1238 in the plaintiffs 2018 MLJ article for reasons known to himself, it carries the defamatory imputation that the plaintiff has ulterior motives and is not sincere;

(v) By suggesting that the plaintiff has another agenda known only to himself when expressing lack of confidence in the professional integrity of the principal submitting person, submitting person and authorities, it carries the defamatory imputation that he was motivated by ill and insincere motives;

(vi) That the plaintiff should refrain from giving talks, lectures or write articles on the CCC and CFO, carries the defamatory imputation, that he is unworthy of credit and unfit to give talks, lectures or write articles for the benefit of members of the public;

A and

(vii) In summary, the defamatory imputations from the words complained of are that the plaintiff is dishonest, untrustworthy, immoral, an unethical person, and has no sense of professionalism despite him being a registered architect, town planner, a chartered arbitrator and an Advocate and Solicitor of the High Court in Malaya.

B

**[36]** Contrary to the assertion by PAM, there is no obligation on the part of the plaintiff to prove that he has been shunned, avoided, or seen as disreputable by right-thinking members of society before the words complained of can be found to be defamatory. This is because it is trite that libel is actionable *per se*, *ie,* without proof of actual harm, see *Chew Hock Jin v. Lim Jenn Shiah* [2021] CLJU 114; [2021] 1 LNS 114; [2021] 4 MLRA 499 (CA) at para. 65.

C

*Whether They Refer To The Plaintiff*

D

**[37]** That the defamatory statements refer to the plaintiff can be clearly seen in the sub-heading of the offending article itself which says that it is a joint paper or article targeted at the plaintiff. The sub-heading says:

> A joint paper by Lembaga Arkitek Malaysia (LAM) and Pertubuhan Arkitek Malaysia (PAM) in response to the article by **Datuk Sundra Rajoo**.
>
> (emphasis added)

E

**[38]** In fact, it can be clearly seen in the offending article that the plaintiff's name is liberally mentioned and, in the words, complained of, the plaintiff's name is mentioned 12 times and in the entire offending article, the plaintiff's name is mentioned 46 times.

F

**[39]** Wherefore, there can be no doubt that the second element for a defamation action has been proved against PAM.

*Whether The Defamatory Statements Were Published By PAM First Impugned Publication – On LAM's Website*

G

**[40]** I had occasion to say in *Felcra Bhd v. Adli Sharidan Sahar & Ors* [2024] CLJU 1663; [2024] MLJU 1851; [2024] 6 MLRH 13 at para. 30 that:

> It is settled law that admissions are the strongest evidence (see *Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors* [1993] CLJU 103; [1993] 1 LNS 103; [1994] 1 MLJ 740) and *admissions in pleadings or judicial admissions stand on a higher footing than evidentiary admissions, and such admissions by themselves can be made the foundation of the rights of the parties*, see *Madelin Bin Salleh (Suing as Administrator of the Estate of the deceased, Salleh bin Kilong) v. Superintendent of Lands & Surveys (Miri Division) And Others* [2005] 3 CLJ 697; [2005] 5 MLJ 305 (CA) where at paragraphs [47], His Lordship Clement Skinner J speaking for the Court of Appeal said:

H

I

> [47] In support of what we say we would refer to Sarkar's Law of Evidence at p 313 under the topic 'Admissions in Pleadings' where it is said:
>
> > *Admissions in pleadings or judicial admissions stand on a higher footing than evidentiary admissions. The former are fully binding on the maker and constitutes a waiver of proof whereas the latter are not conclusive and can be shown to be wrong*. (*Nagindas v. Dalpatram* AIR [1974] SC 471). Admissions in pleadings or judicial admissions by themselves can be made the foundation of the rights of the parties (*Satish Mohan Bindal v. State of UP AIR* [1986] All 126 128 1985 All CJ 507.
> >
> > (emphasis added)

**[41]** In para. 13 of PAM's statement of defence, PAM pleaded as follows:

> The Defendant avers that the Article **presented jointly by LAM and the Defendant** aims at correctly presenting the CCC framework and refuting the various statements and claims made by the plaintiff in the plaintiff's 2018 Article. **Ar. Ezumi Harzani's 2017 Article was taken as a reference in LAM's reply** to the plaintiff's 2018 Article, **hence the byline "A joint Paper by Lembaga Arkitek Malaysia (LAM) and Pertubuhan Arkitek Malaysia (PAM)** in response to the article by Datuk Sundra Rajoo.'
>
> (emphasis added)

**[42]** It is thus crystal-clear that PAM has admitted in its pleadings admitted that the offending article was one that was presented or published jointly by LAM and PAM. This is the first impugned publication. That the offending article was uploaded onto LAM's website on 7 November 2018, and this is not disputed.

**[43]** Besides the admission in para. 13 of PAM's statement of defence, I find that PAM has in its primary written submissions (encl. 100 at paras. 150 and 151) further admitted that it had put up a critique of the plaintiff's alleged limited understanding in the following words:

> 150 ... it was reasonable for LAM **and the Defendant to critique** the plaintiff's limited understanding ...
>
> 151 ... it is reasonable for LAM **and the Defendant to express concern** about his public commentary ...
>
> (emphasis added)

**[44]** Besides the aforesaid admission, there are other pieces of evidence that prove on a balance of probabilities that PAM had participated in the first impugned publication. They are as follows:

(i) In the second paragraph of the offending article itself, it is said that: "In view that the article had caused much confusion and that his singular opinion contradicts the position taken by both LAM and PAM, we are obliged and duty bound to issue this official joint paper to refute fully the various statements and claims made in the article". This clearly shows that PAM had issued the offending article jointly with LAM;

(ii) In the concluding paragraph of the offending article it is said, 'LAM and PAM also strongly believe that Rajoo should refrain from giving lectures or providing articles on the CCC and CFO with his skewed and limited understanding as this could affect the understanding in the subject.' This again clearly shows that PAM had issued the offending article jointly with LAM; and

(iii) Under cross-examination, two out of the three witnesses called by PAM, admitted that at the time of the publication of the offending article in November 2018, DW1 was the President of PAM, DW2 was the Past President on Council of PAM and both who were members of LAM and who were aware of the publication of the offending article, took no steps to stop LAM from representing that PAM was a joint presenter of the offending article or took steps to have the name of PAM removed as such;

(iv) DW1 testified that he had provided his article (CBD4 pp. 1659 to 1668) to LAM for LAM to come up with the offending article which explains the statement used in the offending article that it is a joint paper by LAM and PAM. This was expressly admitted in para. 13 of PAM's statement of defence (*supra*);

(v) DW2 under cross-examination admitted that the offending article was prepared "based on some of the original text originated from PAM and also in consultation with all the board members ... " (NOP3 p 535)

**[45]** The plaintiff cited the following reference materials which I find helpful to make the point that it is not only the originator or author who may be liable but all those who have played a significant part in the act of publication. It is trite that if someone authors some defamatory material but this material is never published, *ie*, made known to a third party, the tort of defamation is not made out. Thus, contrary to the assertion by PAM it is publication rather than authorship that is of import.

**[46]** In the book "*Defamation Law, Procedure And Practice*" (3rd edn) by David Price and Korieh Duodu on 'The meaning of publication' the learned authors have this to say:

> Publication is the technical term for the communication of the defamatory matter by the defendant to at least one person other than the claimant. It need not be published in the traditional sense of the word – it could be spoken, broadcast, sent electronically or in smoke signals. Similarly, it is not only the originator or author who may be liable. *All those who have played a significant part in the act of publication or distribution i.e those who have caused the matter to be published, will be responsible for what is published.*
>
> (emphasis added)

**[47]** In *Doree Industries (M) Sdn Bhd & Ors v. Sri Ram & Co & Ors* [2001] 4 CLJ 446; [2001] 6 MLJ 532, the High Court quoted with approval the following passage from *Halsbury's Laws of England*, 4th edn, re-issue, vol. 28:

> Joint and several liability Every person who takes part in or procures the publication of a libel is *prima facie* jointly and severally liable for all the damage caused by it Thus, if a libel appears in a newspaper, the author of the libel (see *Bond v. Douglas* [1836] 7 C & P 626) and the proprietor, editor, printer, publisher and vendor of the newspaper are *prima facie* jointly and severally liable ...

**[48]** In the leading textbook on defamation, *Gatley on Libel And Slander* (10th edn) at paras. 6.3 and 6.4 at pp. 144 and 145, the learned author said that:

> However, at common law liability extends to any person who participated in. secured or authorized the publication (even the printer of a defamatory work.
>
> Joint and several liability.
>
> In accordance with general principles, all persons who participate in the publication of a libel, and who are liable therefore, are jointly and severally liable for the whole damage suffered by the claimant.
>
> ...

**[49]** The net for liability for publication is cast wide and on this, the plaintiff also cited the case of *Bataille v. Newland & Ors* [2002] EWHC 1692, QB which I find persuasive and where Eady J said:

> To participate in publication in such a way as to be liable in accordance with the law of defamation is not, I should emphasise, to be equated with being the source of the information contained in relevant document. There are various acts that can give rise to legal responsibility, for example, encouraging the primary author, supplying him with information intending or knowing that it will be republished, or if one is in a position to do so, instructing or authorizing; him to publish it.

**[50]** Premised upon the facts that I have found, I find that the plaintiff has proven on a balance of probabilities that besides it having admitted to the joint publication, PAM had supplied information intending or knowing that it was to be published, had knowingly allowed itself to be held out at a joint publisher of the offending article with it not taking any steps to dissociate itself from the offending article which was and continues to be published to the world at large until the date of the handing down of the decision on 10 January 2025, when it could have done so.

**[51]** Thus, having participated in the publication of the joint paper, subject to the further findings hereunder, the defendant can be found to be jointly and severally liable. That LAM is not sued is irrelevant because it is settled law that in a tort committed by more than one joint tortfeasor, it is open to the plaintiff to sue any or all of them, see s. 10(1)(a) of the Civil Law Act 1956.

**[52]** For the sake of completeness, I do not accept the alternative argument presented by the plaintiff that is premised upon the testimony of his expert witness (PW2), the plaintiff has proved on a balance of probabilities that it was DW1 who uploaded the offending article on LAM's website.

**[53]** I accept PW2's expert testimony and his expert report even if it may fall short of certain technical details. To challenge the same on such technicalities after the expert witness has been produced and subjected to cross-examination is to be frowned upon as it leads to the inference that it is a mere afterthought, see *Gee Eng Wah v. Teoh Eng Keong & Anor* [2019] CLJU 783; [2019] 1 LNS 783; [2020] 1 MLRA 22; [2019] MLJU 495 para. 38 and *Village Grove Condominium Management Corporation v. Yunco Enterprise Sdn Bhd* [2021] CLJU 48; [2021 1 LNS 48; [2021] 3 MLRH 345; [2021] AMEJ 0106 paras. 77 and 82.

**[54]** I am persuaded by PW2 that it is the checksum hash value that determines the integrity and authenticity of a document. In this regard, with respect, I do not find the authority of *Sundra Rajoo Nadarajah v. Leaderonomics Sdn Bhd & Anor* [2023] 7 CLJ 485; [2024] 7 MLJ 223 which held that the probative value of metadata in identifying the authorship is low, to be helpful. In any event, with all due respect, pursuant to s. 43 of the Evidence Act 1950, the findings of this judgment is irrelevant, see *Khairy Jamaluddin v. Dato' Seri Anwar Ibrahim* [2015] 3 CLJ 1062; [2015] 3 MLRA 665; [2014] MLJU 1936 at para. 36.

**[55]** Whilst I am persuaded by PW2's expert testimony that based upon the checksum hash value being the same for both the documents that were posted on LAM's website and the WhatsApp chat group, the offending article is the same, I am not persuaded that this tilts the balance as to prove that it was DW1 who uploaded the offending article on LAM's website. Having said this, with I having found that PAM had participated in the joint publication of the offending article posted on LAM's website, the first impugned publication by PAM of the offending article has been proven on a balance of probabilities for the reasons I have narrated above.

*Second Impugned Publication – On WhatsApp Chat Group "Feedback For PAM"*

**[56]** It is undisputed that the offending article was also posted on a WhatsApp chat group, a week later on 14 November 2018.

**[57]** In PAM's primary written submissions (encl. 100 paras. 55 and 56) and its submissions in reply (encl. 112 para. 19), it is admitted that the offending article was shared *via* it being posted on a WhatsApp chat group "feedback for PAM". PAM laid emphasis on sharing information and discussing current issues is a standard practice among architects, especially following publications by LAM, where the offending article is merely one of many disseminated by LAM.

**[58]** Besides the above admission, the following pieces of compelling evidence lead me to find that it is proved on a balance of probabilities that it was PAM who had published it on this WhatsApp group "feedback for PAM" despite DW1's protestation that it was not done by him:

(i) The offending article is found on the mobile telephone 012 266 6866 and it was admitted by PAM that this number belongs to DW1;

(ii) Section 114A of the Evidence Act 1950 provides that: "A person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proved". The offending article was posted on 14 November 2018 at a time when DW1 was the President of PAM and he was also the administrator of the WhatsApp chat group "feedback for PAM";

(iii) DWTs excuse that his wife and daughter assisted him in managing this WhatsApp chat group also serves to lay legal responsibility on him as the administrator who has authorised them to publish the offending article, see *Bataille v. Newland & Ors* (*supra*);

(iv) The expert evidence of PW2 that the offending article on the WhatsApp group chat "feedback for PAM" is the same as that on the LAM website by reason of them having the same checksum hash value or digital thumbprint at a time when DW1 is both the President of PAM, the Administrator of this WhatsApp Group with the title "feedback for PAM" and the owner of the mobile phone number xxx xxx xxxx leads to the inference that it is more probable than not that it was done by DW1 for and on behalf of PAM;

(v) It is undisputed that the WhatsApp chat group "feedback for PAM" has numerous chat participants.

**[59]** Wherefore, I find that the plaintiff has proved on a balance of probabilities that PAM had carried out the second impugned publication.

**[60]** Thus, the plaintiff has discharged his burden of proof by proving on a balance of probabilities the three elements required to make out a case of the tort of defamation against PAM.

**Defence Of Justification And Fair Comment**

**[61]** However, PAM has raised the defence of justification and stated that their comments in the offending article were fair comments made on a matter of public interest.

*Requisite Pleadings For Justification And Fair Comment*

**[62]** It is settled law that where the words complained of are substantially true, it is a complete defence and this is the defence of justification. The burden is on PAM to prove that the defamatory statements are true, and this defence shall not fail if the truth of every charge is not proved, if the words are not proved to be true do not materially injure the plaintiff's reputation, see s. 8 of the Defamation Act 1957 and the Federal Court case of *Abdul Rahman Talib v. Seenivasagam & Anor* [1966] CLJU 5; [1966] 1 LNS 5; [1966] 2 MLJ 66 (FC) at p. 72 para. G.

**[63]** Similarly, the defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of, as are proved, see s. 9 of the Defamation Act 1957.

**[64]** In its statement of defence, it can be seen that PAM has pleaded at para. 23 (A p. 109) as follows:

> The Defendant states that so far as the words complained of in the Article contains a statement of fact, it is true and not in any way whatsoever capable of bearing the meanings alleged by the plaintiff.

**[65]** Further, besides pleading reliance upon s. 8 of the Defamation Act, in para. 24 of its statement of defence (A pp. 109 to 110) PAM particularised 14 facts relied upon in support of the defence of justification.

**[66]** At para. 25 of its statement of defence, PAM pleaded as follows:

> Alternatively, the Defendant states that the words complained of at para. 25 of the statement of claim, if read and understood in the contexts of the true facts stated above, would amount to a fair comment on a subject matter which is of significant importance and of public interest. The comments in the Article are the honest and fair observations in regard to the plaintiff's misconceptions and misleading statements on the CCC regime.

**[67]** Thereafter, besides giving notice, it would be relying on the 14 facts which it alleges to be true and pleaded in para. 24, PAM proceeded to particularise nine instances to support its plea of fair comment. Reliance on s. 9 of the Defamation Act 1957 was also pleaded.

**[68]** However, the plaintiff took issue, asserting that, not only must PAM give particulars stating which of the words complained of it alleges are statements of fact, but PAM must give particulars of the facts and matters it relies upon in support of the allegation that the words are true. Reliance was placed upon the provisions of O. 78 r. 3(2) Rules of Court 2012 ("ROC") which is reproduced hereunder:

3. Obligations to give particulars (O. 78 r. 3)

(2) *Where in an action for libel* or slander *the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.* (emphasis added)

**[69]** Although the plaintiff concedes that PAM had complied with the first obligation in stating which of the matters are statements of fact, in the 14 instances of particulars for justification and the further nine instances of particulars for fair comment on a matter of public interest, he asserts that PAM has, however, failed to comply with the second part of its (mandatory) obligation to provide particulars of the facts and matters relied on in support of the allegation that the words are true and that for fair comment on a matter of public interest. This, the plaintiff asserts is fatal and by reason of which PAM cannot rely upon the defence of justification, with reliance placed upon the following authorities:

(i) *Khairy Jamaluddin v. Dato' Seri Anwar Ibrahim* [2015] 3 CLJ 1062; [2015] 3 MLRA 665; [2014] MLJU 1936 at p. 1078, para. [33];

(ii) *Dato' Sri Mohd Najib Tun Hj Abdul Razak & Anor v. Mohd Rafizi Ramli & Another Appeal* [2018] 4 CLJ 41; [2018] 1 MLJ 295; [2017] 8 AMR 382; [2018] 1 MLRA 341 para. 21;

(iii) *Abu Hassan Hasbullah v. Zukeri Ibrahim* [2018] 3 CLJ 726; [2018] 6 MLJ 396; [2017] AMEJ 1321; [2017] MLRAU 453 paras. 64 & 65

(iv) *Mirzan Mahathir v. Star Papyrus Sdn Bhd* [2000] 5 CLJ 507; [2000] 6 MLJ 29 at 508 Held [4];

(v) *Lee Hsien Loong v. Singapore Democratic Party* [2007] 1 SLR 675 para. 71; and

(vi) *Gatley On Libel And Slander* (10th edn, paras. 27.10 and 27.14).

**[70]** In *Khairy Jamaluddin* (*supra*), the respondent who was the defendant in the court below had applied to amend his defence of justification to include a "lesser/lower defamatory meaning" and a "partial justification". The plaintiff opposed the application on inter alia the ground that the purported particulars of the proposed amended defence did not amount to facts which supported the allegation that the impugned words were true as required by O. 78 r. 3(2) of the ROC. The High Court dismissed the application. Upon appeal, the Court of Appeal in a unanimous decision and speaking through Abdul Aziz Abdul Rahim JCA held as follows:

[26] Whilst the defendant is not and cannot be restricted from seeking to justify the meanings or meanings attributed to the impugned words by the plaintiff, and that the defendant may give a Lucas Box meaning to

A the impugned words or meanings which are different from that alleged by the plaintiff as correctly held by the learned judge, the meanings which the defendant ascribed to the impugned words must be clear and precise. The defendant must also plead the particulars that will support the meanings that he ascribed to the impugned words. In this instant case, the plaintiff has alleged that words uttered and published by the
B defendant bear the meaning that the plaintiff is a homosexual.

...

[29] The *Lucas Box* principle was followed in *Elaine Chase v. News Group Newspapers Ltd* [2002] EWCA Civ 1172 and *Mirzan Mahathir v. Star Papyrus Sdn Bhd* [2000] 5 CLJ 507; [2000] 6 MLJ 29. *The principle in these cases, make*
C *it abundantly clear that what is required for a plea of justification if the defendant contends the words bear a different meaning from that ascribed by the plaintiff, is to state with sufficient precision the meaning he contends and then provide particulars of facts that support that meaning. It is imperative that the meaning be pleaded with clarity so that a plaintiff knows what case he has to meet and the meaning which*
D *the defendant seeks to attribute to the words complained of.*

...

[33] *In our respectful view, it is fatal for the defendant in not complying with O. 78 r. 3(2) of the ROC 2012.* The case of *Lee Kuan Yew v. Chin Vui Khen & Anor* (*supra*) cited by the plaintiff is an authority to support this
E proposition. With regard to this point of the appeal we are in agreement with the learned High Court Judge that the particulars pleaded in para. 11(i) to (v) of the proposed amended defence are not statement of facts but a narrative of the defendant's view and opinions about the opposition parties of which the plaintiff is the *de facto* leader; the opposition parties are not parties to this appeal or the proceedings before
F the High Court.

(emphasis added)

**[71]** The Court of Appeal in *Khairy Jamaluddin* approved the judgment handed down by RK Nathan J in *Mirzan Mahathir* (*supra*) where His Lordship made reference to O. 78 r. 3(2) of the Rules of the High Court 1980 which
G is *in pari materia* with O. 78 r. 3(2) of the ROC and held that:

It is trite that the defendant must not put in a plea of justification lightly or without carefully considering the available evidence before him and as to such evidence as would be likely to be available to him. (See *McDonald's Corp & Anor v. Steel & Anor* [1995] 3 All ER 615 at 621.) On this issue Neill
H LJ whilst restating the criteria that should normally be satisfied before a plea of justification is included in a defence, added a pre-condition that a plea of justification should be properly particularised.

**[72]** In *Mirzan Mahathir*, the High Court went on to hold that:

Based on all these decisions which I accept, it is my conclusion that a
I defendant setting up a plea of justification must plead his case with sufficient particularity, without circumlocution or obfuscation, so as to enable the plaintiff to know the possible defamatory meaning of the

words complained of, which the defendant is seeking to justify. In other words, he must state clearly to the plaintiff what is the case that he is seeking to set up.

...

It is the imputation contained in the words which has to be justified, not the literal truth of the words, nor some other, similar charge not contained in the words. This has two consequences. First, the defendant may succeed in a plea of justification even though what he has said may be inaccurate in a number of respects. Secondly, he may not, under a plea of justification prove the truth of other facts damaging to the plaintiff's reputation, even if they are in the same sector of the plaintiff's life, and would be no less damaging to the plaintiff's reputation. *The issue of what may be advanced under a plea of justification is therefore closely linked to the meaning or meanings which the defamatory words are reasonably capable of bearing*.

*... In compliance with this requirement, the defendant must set out all the facts and matters relied upon in support of his plea of justification ...* On this it is necessary to cite a passage from *Carter-Ruck on Libel and Slander* 5th edn, 1997 at p. 103. It reads as follows:

> *... A defendant who pleads justification is required to deliver full particulars of the facts and the matters upon which he relies in support of such a plea and the evidence at the trial in support of this plea will be strictly confined to these particulars*. The particulars must be sufficiently detailed not merely to enable the plaintiff to go to trial knowing the general lines of the case which is to be made against him, but to know the particular facts which the defendant alleges against him and which go to justify the imputation contained in the libel.

It follows that it is extremely rash to assume it will be possible to justify a libel or slander in a court of law because the imputation happens to be notorious, or because there is every reason to believe the books and papers of the persons attacked will prove it to be well founded. *The publisher of a defamatory statement is not generally in a position to plead justification unless he has available the requisite information or sources of information to enable him to deliver full and detailed particulars of the matters substantiating the allegations: if he wishes to attack he must have his proof ready and to hand or he should not put pen to paper*.

Fair Comment

*... It is therefore a necessary corollary that just as a defendant pleading justification must plead with precision the meaning which he seeks to justify, the same principles must apply to a defendant who has pleaded fair comment as a defence*.

(emphasis added)

**[73]** I accept that the provisions of O. 78 r. 3(2) of the ROC clearly set out what is required when a defendant pleads justification and fair comment. I am also bound by the decisions of the Court of Appeal on the same. However, when the 14 alleged facts particularised in para. 24 for the defence of justification and the further nine particulars pleaded in para. 25 are perused, in my considered view, PAM has pleaded sufficient particulars

stating which of the words complained of it alleges are statements of fact and of the facts and matters it relies on in support of the allegation that the words are true and that they are fair comments on a matter of public interest.

**[74]** The 14 alleged facts in support of the defence of justification and the nine particulars pleaded by PAM in its statement of defence in support of the defence of fair comment on a matter of public interest are reproduced hereunder:

24.1. It is a true fact that the CCC framework was not something new and was already being implemented for single built detached houses since 1999.

24.2. It is a true fact that under the CFO system, architects were fully liable and responsible, under the SDBA and UBBL, for the design and supervision of the entire project by virtue of a declaration made in form E.

24.3. It is a true fact that the issuance of the CFO by the local authority did not relieve the architect from their responsibilities and liabilities.

24.4. It is a true fact that the local authority was not subjected to liability even though the CFO is issued by them.

24.5. It is a true fact that in both systems, the local authority has no liability

24.6. It is a true fact that the CCC system comes with additional advantages as a matrix of responsibilities have been incorporated *via* the introduction of a 21-stage certification whereby each construction phase has to be endorsed by the professionals or contractors before the PSP issues the declaration in Form F.

24.7. It is a true fact that the parties involved would be held responsible and accountable in their scope of works.

24.8. It is a true fact that the liabilities of all the parties are now clearly defined.

24.9. It is a true fact that the CCC system does not place more liability than necessary on the PSP.

24.10. It is a true fact that all professions carry professional liabilities. However, only if the PSP failed in their duty will they ultimately be subjected to liability.

24.11. It is a true fact that stern penalties/action is primarily to protect the public's interest and to uphold the integrity of the profession.

24.12. It is a true fact that with the implementation of the CCC system, vacant possession for housing is to be issued only with the CCC. This benefits house purchasers who, under the previous system, could take over vacant possession of the property but not occupy it until the CFO was issued.

24.13. It is a true fact that in the case of *Pendakwa Raya v. Chew Weng Leong* [2015] CLJU 1117; [2015], the decision was ultimately made in favour of the PSP at the Sessions Court.

24.14. It is a true fact that after more than a decade of implementation of the CCC system, any move to revert back to the old system will be regressive.

The defendant will, if necessary, rely on Section 8 of the Defamation Act 1957.

PARTICULARS RELIED ON FOR FAIR COMMENT

25. Alternatively, the defendant states that the words complained of at para. 25 of the statement of claim, if read and understood in the contexts of the true facts stated above, would amount to a fair comment on a subject matter which is of significant importance and of public interest. The comments in the Article are the honest and fair observations in regard to the plaintiff's misconceptions and misleading statements on the CCC system.

Particulars relied on

25.1. The Article addresses the misconception and incorrect perspective of the CCC framework and refutes fully the various statements and claims made by the plaintiff whose singular opinion contradicts the position taken by both LAM and the defendant

25.2. The comment "demonstrates ignorance of the fact" is fair made in regard to the correct fact that the CCC framework was not something new and was already being implemented for single built detached houses since 1999.

25.3. The comment "understanding and grasp of the CCC regime is shallow and misplaced" is an honest observation and fair in the context of the rebuttal of the plaintiff's statements that ten years info implementation the CCC framework has proven to be more of a "bane than a boon".

25.4. The comment "lack of understanding and knowledge of the liabilities" is a fair and honest observation in light of the fact that various bodies are accountable for the certification under the CCC system.

25.5. The comment "unfounded and mischievous" is a fair comment as the CCC system does not place additional liability on the PSP.

25.6. The comment "has not explained the full facts of the case for reasons known to himself" is fair in the circumstances that the final judgment in the case of *Pendakwa Raya v. Chew Weng Leong* [2015] favoured the PSP. The plaintiff only alluded to facts that favoured him.

25.7. The comment "seems to have little understanding on the concept of professionalism" is fair having regard to the plaintiff's failure to recognize and appreciate that all professionals carry professional liabilities and must uphold the trust and confidence placed on them or be subjected to liability.

25.8. The comment "misplaced and regressive", "lack of knowledge in CCC frameworks" and "indicate another agenda known to himself' is fair in the context of its usage. The plaintiff in his article stated that "time is ripe for a push back and dismantling of the present system". The comments are fair having regard to the fact that the CCC system is over a decade into its implementation and any regression to the previous system will negatively impact the country.

25.9. The remark that the plaintiff "should refrain from giving lectures or providing articles on CCC and CFO" is a fair and honest observation by LAM and the defendant having a legitimate interest in the subject matter.

The defendant will, if necessary, rely on Section 9 of the Defamation Act 1957.

**[75]** However, that does not mean that the defences of justification and fair comment on a matter of public interest have been made out. The burden lies upon PAM to firstly prove the truth of these particulars but whether the particulars as proved would be sufficient to make out its defence of justification and fair comment on a matter of public interest is a question of law for this court to decide.

*Justification*

**[76]** The subject matter of the offending article has to do with the CFO and the CCC regimes.

**[77]** It is important to bear in mind that the offending article was published *via* the first and second impugned publications in response to the plaintiff's 2017 article and the plaintiff's 2018 MLJ article (CBD4 pp. 1342-1364 and 1321-1341).

**[78]** Prior to these two articles of his, the plaintiff had some ten years earlier co-authored an article entitled "*The Certificate Of Completion And Compliance (CCC) In The Building Industry – Bugbear or Bunkum*" published by MLJ ("plaintiffs 2008 MLJ article"). The plaintiff's 2018 MLJ article was written as a reflection ten years later with a view to once again highlighting the differences in both the CCC and CFO regimes and pointing out what in his opinion are deficiencies in the former and calling for an open discourse and debate from all relevant stakeholders. It can be seen that the plaintiff has a keen interest in the developments of these two regimes and, given his qualifications, in my considered view, he is particularly qualified to give his comments.

**[79]** That the plaintiff was expressing his opinion on this subject is expressly accepted by PAM in the offending article which made mention that the plaintiff was expressing his "singular opinion" in his 2018 MLJ article (CBD4 p. 1392 Preamble para. 2 lines 7 & 8).

**[80]** In "*The Concise Oxford Dictionary of Current English* (7th edn)" an opinion is defined to mean:

> **Judgment or belief based on grounds short of proof, provisional conviction, view held as probable.**
>
> (emphasis added)

**[81]** In his conclusion in the plaintiff's 2018 MLJ article, he explained that:

> The purpose of this article is only to imply that there is an urgent need to balance the scale of liabilities. To say the very least, here is an imminent need for open discourse and debate to rectify problems in the coming years. This will in turn benefit all stakeholders including the PSPs and greatly aid the construction industry at large.

**[82]** PAM took the opinion articulated by the plaintiff's articles badly. This comes across clearly when DW2 gave her testimony. She was very passionate about the migration from the CFO regime which covered only single-built detached houses in 1999 to the CCC regime of self-regulation and certification by the principal submitting person, which includes a matrix of responsibility encompassing a 21-stage certification. She testified on the numerous meetings and discussions with stakeholders, the local authorities and even the lawmakers responsible for the drafting of the amendments to the SDBA Act 133 and the Uniform Building By-Laws 1984 ("UBBL") to bring about the migration. The impression given was that she was horrified that someone like the plaintiff would want to question what to her mind, and by extension that of PAM, the benefits of the CCC regime and if the views of the plaintiff were to be accepted, it would put to waste all the time and effort she, and by extension, PAM has put in. On behalf of PAM, DW2 described that this would be regressive.

**[83]** It was put to the plaintiff under cross-examination that the substitution of the CFO regime was in fact proposed by the then Prime Minister Abdullah Badawi, as mentioned in the offending article (CBD4 p. 1394 para. 1) who said he could not remember or know about it. No evidence was however led by PAM to prove this assertion.

**[84]** However, instead of putting up a rebuttal opinion setting out what they in their opinion perceived as facts and the benefits of the CCC regime, and disagreeing with the plaintiff's opinion in a measured tone, PAM jointly with LAM published the offending article with words complained of, which I have found to be defamatory.

**[85]** On the defence of justification, I find that the defendant has not proved it on a balance of probabilities. I find that what is asserted by both the disputants, *ie*, the plaintiff and the defendant are their respective views on the CFO and CCC regimes with strong but contrary views expressed. Just because a view is expressed by what is seemingly the majority does not by itself represent the truth. This is exemplified by the differences of opinion

held by our judges of the apex court with minority judgments finding acceptance by the majority in later panels, see for *eg*, the test for *locus standi* propounded in the minority judgment of Eusoffe Abdoolcader SCJ in *Government Of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63; [1988] 2 MLJ 12; [1988] 1 MLRA 178 which was later adopted as the test to be applied for *locus standi*, see *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals* [2023] 5 CLJ 167; [2023] 3 MLJ 82 and *Nik Elin Zurina Nik Abdul Rashid & Anor v. Kerajaan Negeri Kelantan* [2024] 3 CLJ 323; [2024] 2 MLJ 150 at para. 22.

**[86]** In the instant case, this is underscored by the case of *Majlis Perbandaran Ampang Jaya v. Steven Phoa Cheng Loon & Ors* [2006] 2 CLJ 1; [2006] 2 MLJ 389; [2006] 1 MLRA 166 wherein there is a dissenting judgment on whether s. 95(2) of the Street, Drainage and Building Act 1974 protects the local authority from an action in negligence post the collapse of the building.

**[87]** When each of the 14 alleged facts is referred to, with respect, in my considered view, they do not justify PAM to use words which are egregious and vitriolic against the plaintiff personally instead of the views that the plaintiff was conveying. The idiom "don't shoot the messenger" comes to mind and which is particularly apt in the circumstances.

**[88]** By way of analogy, those in the honourable legal profession would be well-versed with the principle that even when they take on the task to act without fear or favour in cases where the acts or omissions of the parties to the action may seem highly immoral and objectionable, the underlying concept of courtesy is always held dear to the heart of all including the opposing side and the presiding officer of the tribunal they appear before. All are entitled to express their views however, objectionable they may sound, and be heard courteously.

**[89]** In any event, in my considered view, having perused the comprehensive submissions in reply (encl. 114 paras. 58 to 128) to each of the 14 avowed true facts, which I find persuasive, I find that PAM has failed to prove on a balance of probabilities how these 14 avowed facts make out its defence of justification when it employed the words complained of.

**[90]** It would make the grounds herein prolix to set out all the arguments presented against the 14 instances.

**[91]** I agree that the CCC regime, is in fact, a distinct system from the previous self-certification system under the CFO regime although it may carry the same description. The previous self-certification system under the CFO regime, in contrast to the current CCC system, is delegated by the local authority to the qualified person (QP), and it must be borne in mind that it is applicable only to simpler and single-built detached houses

**[92]** Be that as it may, the following, as was highlighted by the plaintiff, the CCC regime comes with very onerous potential liabilities cast upon the PSP. These are as follows:

(i) Under the previous CFO regime under the SDBA 1974 there was no likelihood of any possible custodial sentence on the QP. However, under the CCC regime, pursuant to s. 70(27) SDBA 2007, upon conviction the PSP shall be liable to a fine not exceeding RM250,000 or to imprisonment for a term not exceeding ten years or to both;

(ii) Although PAM through DW2 took great pains to testify that the CCC regime has introduced the 21-certification matrix where all who have performed work including contractors were to certify the integrity of their respective works, s. 70(20) of the SDBA Act 133 expressly provides that no CCC shall be issued except by a PSP and before such issuance, it shall be the duty and responsibility of the PSP to:

(a) supervise the erection of the building to ensure that the erection is in conformity with the approved plans and the requirements of the provisions of this Act or any by-laws made thereunder;

(b) ensure that the building has been duly constructed and completed in conformity with the approved plans and the requirements of this Act or any by-laws made thereunder and that all technical conditions imposed by the local authority have been duly complied with; and

(c) ensure that the building is safe and fit for occupation.

This is consonant with the Form F as prescribed by the second Schedule to the UBBL 1984 which the PSP has to execute wherein the PSP certifies in the following words "I hereby certify that the building/ buildings are safe and fit for occupancy."

(iii) Thus, despite the 21-certification process, under the CCC regime it is the PSP who can be charged. This was what happened in the case of *PP v. Chew Weng Leong*. That the accused, Chew Weng Leong, was ultimately acquitted on grounds which were not made available, does not detract from the point being made by the plaintiff of the potential liability that can befall the PSP if convicted. To attribute a hidden agenda and ill motive on the plaintiff for highlighting this case is unjustified. More so, when Chew Weng Leong was discharged at the end of the prosecution case but upon appeal the High Court had reversed the finding of the Sessions Court that there was no *prima facie* case and remitted the case back for the accused to enter on his defence;

(iv) That it will be regressive to revert to the CFO is but an opinion which PAM holds dear, rather than a fact;

(v) It was not justified for PAM to attack the plaintiff with the words complained of when the plaintiff had referred to the dissenting judgment of His Lordship, Steve Shim CJSS in *Majlis Perbandaran Ampang Jaya*

*v. Steven Phoa Cheng Loon & Ors* in making his point that at the apex court there is a view that the local authority can be held liable for post-collapse negligence and who can then be called upon to share the burden of liability with the PSP. Although, ideally that the plaintiff ought to have stated that Justice Steve Shim's opinion was a minority decision, the plaintiff testified that he did not know of the same, and under re-examination he explained that he took up this point as it aligned with his views;

(vi) At the risk of repetition, it is not uncommon for a dissenting judgment to find favour later. See the speech on '*The Role Of Dissenting Judgments In The Malaysian Judicial System*' delivered by Tan Sri Datuk Seri Panglima (later Tun) Richard Malanjum on the occasion of the 17th Tan Sri Ahmad Ibrahim Memorial Lecture

*Fair Comment On A Matter Of Public Interest*

**[93]** In my considered view, when the words complained of are read together with the offending article as a whole, is looked at, it comes across clearly that the offending article is designed to attack the plaintiff personally.

**[94]** I agree with the plaintiff that instead of expressing its disagreement with the views expressed by the plaintiff and then going on to articulate the reasons for its disagreement, the words complained of are structured in a manner which appears on almost every page of the offending article, with the plaintiff's name liberally sprinkled 46 times all over the offending article including the sub-heading.

**[95]** The choice of words complained of was extreme and far exceeded the bounds of fair comment on a matter of public interest. On the use of extreme language, in *Utusan Melayu (Malaysia) Bhd & Ors v. Tjanting Handicraft Sdn Bhd & Anor* [2005] 1 CLJ 71; [2004] 2 MLRA 519 the Court of Appeal has this to say:

> On the subject of fair comment, we agree with the learned trial judge that the words complained of far exceeded the bound of fair comment and just criticism. The usage of the words such as 'Hodoh', 'rupa yang buruk', 'sakit hati melihat', 'siapalah yang mencipta baju batik itu?', 'corak tidak halus', 'paduan warna tidak harmoni, tidak eksklusif', 'potongan pula tidak terletak di badan, meleweh, melendut, gedoboh, send at', 'tidak bermutu', 'barang yang dijual di pasaraya borong lebih bermutu' are certainly words that tend to disparage the respondents in the world of batik fashion. **The language used was so extreme that no fair-minded person, however obstinate and prejudiced his views were, would have honestly used them** (*Me Quire v. Western Morning News* [1903] 2 KB 100).
>
> (emphasis added)

**[96]** In the plaintiff's articles, the plaintiff has concluded with a call for all stakeholders to relook at the CCC regime where the liability is put upon the PSP. This would include whether the local authority ought to share some

responsibility which would require a re-look at the provisions of s. 95(2) SDBA. This would be a fair comment when the development nowadays can run into tens and hundreds of millions, and even exceeding a billion ringgit with liability falling on the PSP who would be an individual, and who would probably be unable to bear the full brunt of liability if it runs into tens and hundreds of millions of ringgit.

**[97]** Wherefore, I find that the defendant has not proved on a balance of probabilities of the defence of fair comment on a matter of public interest.

*Malice*

**[98]** In any event, even if the comments can be found to be fair on a matter of public interest, I find that the plaintiff has proved on a balance of probabilities that these comments were actuated by malice for the following reasons:

(i) From the testimony of DW2, it is clear that the defendant wants to hold onto the CCC regime at all costs given the amount of time, energy and efforts invested in doing so;

(ii) In its efforts to hold onto the CCC regime, the defendant has even overlooked that one of its aims and objectives under its Constitution is to "promote friendly interaction and discourse amongst architects, and to hold meetings for readings and discussions of matters relating to the art and science of architecture";

(iii) Whilst the language used in expressing an opinion can be strong and robust, after considering the evidence led, I find that the language used in the offending article was carefully chosen to cut, to humiliate, to ridicule and to hurt;

(iv) These words used were repeated at different stages in the offending article from which the inference a reasonable reader is driven to, is that it was aimed directly at the author (plaintiff) rather than the message the author was conveying;

(v) For the reasons following immediately after this on why a society can be sued for defamation, contrary to the defendant's assertion, malice can be inferred from the acts of a society, such as PAM, which is not a political party;

(vi) PAM asserted that it had invited the plaintiff to attend a special meeting to present a comparative analysis, but the plaintiff chose not to attend. However, this was not pleaded to negate malice and should not be considered. In any event, no supporting documentary evidence was produced to support the oral evidence that such an invitation was made by the secretariat of PAM and neither was the person who made the invitation called to testify. Thus, such evidence is hearsay and inadmissible. It was also put to DW1 during cross-examination that the

plaintiff had told the secretariat of PAM that he would be away overseas with no other alternative dates proposed by PAM. In my considered view, although DW1 denied being aware that the plaintiff would be away overseas, given the defamatory nature of the contents of the offending article, the effort, if at all there was one, was grossly insufficient to afford the plaintiff an opportunity to respond so as to negate malice.

**Other Issue**

*Whether PAM As A Society Can Be Sued For Defamation*

**[99]** During the course of presenting closing submissions, the defendant raised the issue that it had been decided by the Federal Court that a political party registered as a society cannot sue for defamation. Conversely, with it being a society, similarly it cannot be sued for defamation. Reference was made to the case of *Lim Lip Eng v. Ong Ka Chuan* [2022] 5 CLJ 847.

**[100]** With respect, I disagree with the defendant's assertion for the reasons articulated eloquently by Her Ladyship Noor Hayati Mat J in *Ragavan Rajoo v. Ignatian Benedict Duraisingham* [2025] CLJU 107; [2025] MLJU 147 at paras. 47 to 49 and 55 which I set out hereunder *in extenso* and which I gratefully adopt:

> [47] On this finding, I am guided by the Federal Court decision in *Lee Tuck Suan v. Tunku Dato Seri Shahabudin bin Tunku Besar Burhanuddin* [2009] 4 CLJ 365; [2009] 4 MLJ 759, which was not referred to or perhaps not brought to the attention of the FC in the case of *Lee Lip Eng*.
>
> [48] In *Lee Tuck Suan*, one of the issues that arose for determination was whether the club (The Selangor Turf Club), being an unincorporated association, could sue or be sued by reason of s. 9(c) of the SA.
>
> [49] Justice Abdul Aziz Mohamad, FCJ, upon deliberating the lengthy submission of parties on the "legal entity", had this to say in para. 13:
>
> > [13] As to the right to sue and liability to be used, according to s. 9(c) of the Act a society may sue or be sued in the name of the member who is its registered public officer or, if there is no registered public officer, in the name of an office bearer of the society. The person in whose name the society sues or is sued is stated in s. 9e(ii) as suing or being sued 'on behalf of the society'. This means that although the suit is not in the society's name, it is still a suit by or against the society, but through its agent.."
>
> [55] Again, Kelab PJ is not a political party. They are not suing for damages for defamation against them. They are being sued by the plaintiff, who named the office bearers on behalf of the society to enable them to defend themselves in the allegations against them. All are done within the provisions of the existing law.

**[101]** See also *Mahdzir Md Isa v. Mohd Ridhuan Tee Abdullah* [2022] CLJU 482; [2022] 1 LNS 482 a decision of Her Ladyship Alice Loke J at paras. 18 and 20.

**[102]** It is indisputable that the defendant is not a political party. I am bound by the decision of the Federal Court in *Lee Tak Suan & Anor v. Tunku Dato Seri Shahabudin & Ors* (*supra*), and I find that the defendant can be sued for defamation pursuant to s. 9(c) of the Societies Act 1966 (Revised 2021) which provides that:

> A society may sue or be sued in the name of such one of its members as shall be declared to the Registrar and registered by him as the public officer of the society for that purpose, and, if no such person is registered, it shall be competent for any person having a claim or demand against the society to sue the society in the name of any office-bearer of the society.

**Finding**

**[103]** Wherefore, I find that the plaintiff has proved on a balance of probabilities that his cause of action was grounded on defamation and that the defendant has failed to prove on a balance of probabilities its defences of justification and fair comment on a matter of public interest.

**Damages**

**[104]** The defendant took issue with the plaintiff having not led any evidence on damages. However, the law is trite that when the plaintiff has been libeled, the law presumes that some damages will result *ie*, it is actionable *per se*. See *Indrani Ramasamy v. Kesavan Subramaniam* [2024] 2 CLJ 411 at paras. 40 and 42.

**[105]** The plaintiff has prayed for general and aggravated damages. In assessing the amount of damages, guidance is taken from the Court of Appeal authority of *Chin Choon v. Chua Jui Meng* [2005] 2 CLJ 569 which held that the following factors which are not exhaustive are to be considered:

(i) The gravity of the allegation;

(ii) The size and influence of the circulation;

(iii) The effect of the publication;

(iv) The extent and nature of the claimant's reputation;

(v) The behaviour of the defendant; and

(vi) The behaviour of claimant.

**[106]** On the gravity of the allegation, I accept the plaintiff's assertion that the sting of the libel would lead the hypothetical reasonable reader to draw the following inferences of the plaintiff are that:

(i) he deliberately published misleading contents in the plaintiffs Articles in relation to the CCC regime;

(ii) he is an irresponsible author;

(iii) he is unfit to publish articles on issues relating to the CCC as he is unfamiliar and inexperienced with the CCC regime;

(iv) he is negligent, reckless, and irresponsible in publishing the plaintiffs articles which would mislead and have misled members of the public;

(v) his understanding and grasp of the CCC regime is shallow, misplaced, and questionable;

(vi) it was mischievous of him to publish the plaintiffs articles;

(vii) he intended to confuse and mislead members of the public with his limited understanding and knowledge of the CCC and CFO regimes through his (plaintiffs) articles;

(viii) he has a skewed and limited understanding of the CCC framework;

(ix) he has ulterior motives and a hidden agenda in withholding the full facts of the case of *PP v. Chew Weng Leong* [2015] CLJU 1117; [2015] MLJU 1238 in the plaintiffs 2018 MLJ article;

(x) his has no or little faith in the professionalism of professional and practising architects:

(xi) he is untrustworthy, an unethical person, and has no sense of professionalism as a registered architect,

(xii) he has a hidden agenda in publishing the his (plaintiffs) articles;

(xiii) he should refrain from giving talks, lectures or write articles on the CCC and CFO regimes:

(xiv) he is unfit to give talks, lectures or write articles for the benefit of members of the public; and

(xv) members of the public therefore should be wary of reading articles written by him or accept his views, or take into account any suggestion or advice given by him.

**[107]** In the case of *John v. MGN Ltd* [1997] QB 586 at 607, the English Court of Appeal held that "in assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be " And, in *Ling Wah Press (M) Sdn Bhd & Ors v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [2000] 3 CLJ 728; [2000] 4 MLJ 77 (FC), the Federal Court said that:

> But a small sum awarded to a prominent public figure fora serious libel could be interpreted as trivialising the incident.

**[108]** Given the professional standing of the plaintiff both nationally and internationally, which has been set out above under the sub-heading of Parties, the defamatory comments and imputations do touch on his integrity, credibility, personal and professional reputation, and thus are very serious.

**[109]** The publication was on LAM's website which is, thus, worldwide. The publication of the defendant's WhatsApp chat group "feedback for PAM" had 215 participants. As these would be in the main his peers, the feeling of being brought into hatred, ridicule and being humiliated will be acute and distressing.

*Aggravating Factors*

**[110]** I take into account the fact that despite his two letters of demand made through his former solicitors, no apology was tendered by the defendant. Instead, the plaintiff was subjected to vigorous cross-examination with the defendant continuing to maintain that it was justified in publishing the defamatory comments and that these comments were fair on a matter of public interest right up to the end of the trial during closing submissions. This is evidence of a lack of remorse

**[111]** The defendant is content to be held out to the world at large that it is the joint presenter of the offending article. On LAM's website, as pointed out by the plaintiff there is a link with the eye-catching word "hot" meant to entice visitors to click on the link to the offending article (CBD4 p 65).

**[112]** The defendant had in its statement of defence in para. 20.1 pleaded that if the plaintiff had been brought into public scandal, odium, contempt or embarrassment, it is not attributed to the offending article but by reason of the charges for criminal breach of trust which were brought against him by the Malaysian Anti-Corruption Commission which gained widespread publicity, locally and internationally. However, by the time the defendant filed its defence on 10 December 2021, it was aware by June 2021 (NOP p. 248 line 4) that the plaintiff had succeeded in his judicial review application at the Federal Court to have the charges quashed, see *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 6 CLJ 199.

**[113]** However, the defendant did not at any time up till the conclusion of the trial with I handing down judgment on 10 January 2025, three years later, sought to withdraw such a plea. This speaks ill of the defendant and aggravates the hurt done to the plaintiff because it is trite that conduct of the defendant in presenting its defence up until the conclusion of trial is a relevant factor to take into account, see *M.G.G. Pillai v. Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals* [1995] 2 CLJ 912; [1995] 2 MLJ 493 at p. 932 (CLJ); p. 524 (MLJ) where Gopal Sri Ram JCA said:

> *Lastly, a court is entitled, and should have regard to the conduct of a defendant in a libel action. That conduct extends from at least the date of publication of the libel – although there may be cases where conduct antecedent to the publication may become relevant – until the final speeches at the trial.* Such conduct will have a

bearing on the making of an award for exemplary damages. This area of the law is so well covered by the decisions in *Rookes v. Barnard* [1964] AC 1129; [1964] 1 All ER 367; [1964] 2 WLR 269 and in *Cassell* that no repetition of it here is called for.

(emphasis added)

## Decision On Damages

**[114]** On the quantum of damages for both general and aggravated, it is settled that aggravated damages are part of general damages. However, I set out the above aggravating factors which I take into account for purposes of making a rolled-up award which is an award of both general and aggravated damages.

**[115]** Although the plaintiff had sought an award for each of the two publications, and that any re-publication is, a treated as a fresh libel, I take into account that the contents of the offending article are the same in both the publications. This to my mind should be taken into account when assessing the quantum of damages.

**[116]** I also bear in mind the award of damages, both general and aggravated, that have been handed down by the courts in Malaysia. I set out hereunder in a table form a selection of these cases.

| No. | Case | Court | Position of claimant | Damages | Costs |
|---|---|---|---|---|---|
| 1. | Syed Husin Ali V. Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] CLJU 146 | HC | Lecturer of the University of Malaya | $6,500 | With costs |
| 2. | Datuk Harris Mohd Salleh v. Abdul Jalil Ahmad & Anor [1983] CLJ 521 (Rep) | HC | Chief Minister of Sabah | RM100,000 | With costs |
| 3. | Dato' Musa Hitam v. S.H. AlAttas & Ors. [1991] 2 CLJ (Rep) 487 | HC | Politician | RM100,000 | With costs |
| 4. | Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393<br>Bre v Tun D. Patinggi [2005] 2 CLJ 645 (CA) | HC (affirmed by CA in 2005) | Former Chief Minister & former Governor for the State of Sarawak | RM100,000 | With costs |
| 5. | Ling Wah Press (M) Sdn Bhd v Tan Sri Dato Vincent Tan Chee Yioun [2000] 4 MLJ 77 | FC | Group chief executive officer of Berjaya Group Bhd | RM7,000,000 | With costs |
| 6. | Liew Yew Tiam & Ors v. Cheah Cheng Hoe & Ors [2001] 2 CLJ 385 | CA | Firm of solicitors | RM100,000 | No costs |
| 7. | Karpal Singh Ram Singh v. DP Vijandran [2001] 3 CLJ 871 | CA | Lawyers/ politicians | RM100,000 | (half costs of appeal) |
| 8. | Utusan Melayu (Malaysia) Bhd & Ors v Tjanting Handicraft Sdn Bhd & Anor [2005] 1 CLJ 71 | CA | Business/ manufacturer | RM250,000 | With costs |
| 9. | Chin Choon v Chua Jui Meng [2005] 2 CLJ 569 | CA | Deputy Minister for International Trade and Industry | RM200,000 | No order |

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|---|---|---|---|---|---|
| 10. | Datuk Harris Mohd Salleh v. Datuk Mohd Shafie Hj Apdal & Ors [2009] 2 CLJ 882 | HC (affirmed by CA) | Politician & former Chief Minister of Sabah | RM50,000 | RM100,000 |
| 11. | Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2010] 5 CLJ 301 | HC | Former Deputy PM and former Minister of Finance | RM100,000 | RM20,000 |
| 12. | Dato' Hassan Mohamed Ali v. Tengku Putra Tengku Awang & Yang Lain [2010] 7 CLJ 856 | HC | Politician | RM50,000 | RM100,000 |
| 13. | Chong Siew Chiang v. Ng Kim Ho & Anor [2011] 6 CLJ 62 | HC | Lawyer/ politician | RM100,000 (D1) RM50,000 (D2) | With costs |
| 14. | Dato' Dr Tan Chee Khuan v. Chin Choong Seng [2011] 8 CLJ 574 | HC | Doctor/ consultant/ art businessman | RM150,000 | RM10,000 |
| 15. | Kumarasamy Naciappan v. The New Straits Times Press (M) Bhd [2012] 1 LNS 997 | HC | Businessman | RM120,000 | RM15,000 |
| 16. | Lim Guan Eng v. Utusan Melayu (M) Bhd [2012] 2 CLJ 619 | HC | Chief Minister, MP, State Assemblyman Secretary-General | RM200,000 | RM25,000 |
| 17. | Harry Isaacs & others v Berita Harian Sdb Bhd [2012] CLJU 1359 | CA | P1: owner of private school P2: private school P3. law firm | RM150,000 + RM75,000 (pay to P1 & P2) RM50,000 + RM25,000 (pay to P3) | RM50,000 |
| 18. | Tan Sri Dato' Lim Guan Teik v. Tan Kai Hee [2013] 10 CLJ 771 | HC | Chairman of Business Board of Directors | RM200,000 | RM100,000 |
| 19. | Abdul Razak Mohd Noor v. Wan Muhammad Azri Wan Deris, WA-23NCVC-17-01-2012 | HC | Businessman/CEO | RM500,000 | RM50,000 |
| 20. | Datuk Seri Anwar Ibrahim v Wan Muhammad Azri Wan Deris [2015] 2 CLJ 557 | HC | Politician | RM800,000 | RM50,000 |
| 21. | Jahara Hamid v. Lim Guan Eng [2015] 6 CLJ 328 | HC | Chief Minister, MP, State Assemblyman Secretary-General | RM500,000 | RM40,000 |

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|---|---|---|---|---|---|
| 22. | Dato' Ahmad Rejal Arbee & Anor v. Mahfuz Omar [2015] 6 CLJ 149 | CA | Member of Parliament and senior member of PAS | RM110,000 | With costs |
| 23. | Sistem Televisyen Malaysia Bhd & Ors v. Nurullah Zawawi & Anor [2015] 9 CLJ 357 | CA | P1: celebrity P2: law lecturer | RM80,000 (reduced from RM250,000 awarded by HC) | - |
| 24. | Dato' Ahmad Sudin v. Dato' Ariffin Man [2016] 1 LNS 136 | HC | Kedah State Assemblyman | RM100,000 (general damages) RM50,000 (aggravated damages) | RM30,000 |
| 25. | Lim Guan Eng v New Straits Times Press (M) Bhd [2017] 9 MLJ 622 | HC | Chief Minister, MP, State Assemblyman Secretary-General | RM300,000 | RM35,000 |
| 26. | Nurul Izzah binti Anwar v Tan Sri Khalid bin Abu Bakar & Anor [2018] 7 CLJ 622 | HC | Member of Parliament and Vice-President of PKR | RM400,000 (D1) RM600,000 (D2) | RM80,000 |
| 27. | Datuk Harris Mohd Salleh v Datuk Yong Teck Lee & anor [2018] 1 CLJ 145 | FC | Former Chief Minister | RM600,000 | RM200,000 |
| 28. | Warisan Pinang Sdn. Bhd. & Ors v Carolyn Khor Tsai Chen [2023] CLJU 1560 | HC | Communication Chief of Wanita Keadilan of PKR | RM100,000 (to P1 and P2 each) RM80,000 (to P3) | RM40,000 |
| 29. | Sri Lai Cha Suang @ Jessy Lai & Anor v Lim Lip Eng [2023] CLJU 705 | | P1: businessman P2: company | RM500,000 (to P1) RM1,500,000 (to P2) | RM250,000 |
| 30. | Dr Zakir Abdul Karim Naik v Ramasamy Palanisamy & Another Case [2024] 3 CLJ 731 | HC | Religious figure | RM1,450,000 | RM70,000 |
| 31. | Dato' Foo Ming Lam & Anor v Wee Meng Chee [2024] CLJU 436 | HC | P1: businessman P2: company | RM350,000 | RM50,000 |
| 32. | Jason Jonathan Lo v Star Media Group Berhad & Ors [2024] CLJU 470 | HC | Celebrity | RM200,000 | RM40,000 |

**[117]** Having taken into account all the aforesaid factors and the quantum that have been awarded for past decided cases, and given the plaintiff's undisputed standing both nationally and internationally, I award a rolled-up award of both general and aggravated damages of RM400,000 together with interest thereon at 5% pa from the date of judgment (10 January 2025) as prayed until the date of full settlement.

**Other Reliefs**

**[118]** As LAM is not a party to this action, and the offending article is on its website, and with there being no retraction of the defamatory statements by the defendant, I grant the further following reliefs as prayed:

(i) That the defendant publishes a notice of disassociation from the offending article on LAM's website entitled "Refuting Unsubstantiated and Misleading Claims on Flaws of Certificate of Completion and Compliance" on terms which is to be approved by both the plaintiff and the defendant within two weeks from the date hereof and to be published in the English and Malay languages respectively in The Star and Berita Harian online editions only, with liberty to apply,

(b) that the defendant removes or cause to be removed the offending article "Refuting Unsubstantiated and Misleading Claims on Flaws of Certificate of Completion and Compliance" (second impugned publication) which was uploaded and published in the WhatsApp chat group known as feedback for PAM within seven days from the date of this judgment;

(c) an injunction is granted to restrain the defendant whether by itself, its associates, its agents and or its representatives from publishing the offending article containing the words complained of or similar words defamatory of and concerning the plaintiff; and

(d) costs of RM100,000, subject to allocatur to be paid by the defendant to the plaintiff

**Conclusion**

**[119]** For the reasons aforesaid, this court finds that the plaintiff has succeeded in his claim against the defendant for defamation and awards him general and aggravated damages of RM400,000 together with interest thereon at 5% pa from the date of judgment until full settlement and costs of RM100,000 subject to allocatur to be paid by the defendant to the plaintiff. The defendant is further ordered to publish a notice of disassociation from the offending article from LAM's website and remove the same from its WhatsApp chat group "feedback for PAM" on terms set out above, and that it is restrained from publishing the offending article containing the words complained of.